

**Remarks**

Claims 1, 2, 6, 7, 9, 11, 15, and 25 are pending. Claims 2 and 25 have been canceled. Claim 1 has been amended to correct a typographical error in the previous amendment to the definition of X. Applicants assert that this amendment presents no issue of new matter, as basis for the amendment can be found in the specification at least on page 3, line 2. In addition, Applicants have added new Claim 42, the basis for which may be found in the specification on page 18, lines 22-24. As such, Applicants assert that there is no issue of new matter. Further responses to the Examiner's comments in the Office Action dated April 10, 2008 are provided below.

**Claim Rejections – 35 U.S.C. § 112, second paragraph**

The Examiner has rejected Claim 1 and dependent claims under 35 U.S.C. § 112 as indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Further, the Examiner indicates that Claim 2 is redundant in view of the amendments to Claim 1 where R<sup>2</sup> is –CO<sub>2</sub>H. Applicants have canceled Claim 2, and assert that Claim 1 as amended meets the requirements of 35 U.S.C. § 112, second paragraph. Withdrawal of this rejection is thus respectfully requested.

**Claim Rejections – 35 U.S.C. § 112, first paragraph**

The Examiner has maintained a rejection to Claims 1-4, 6, 7, 9, 11, and 15 under 35 U.S.C. § 112, first paragraph. Applicants note that Claims 2 and 3 have been canceled. The Examiner has stated that because the specification does not provide any biological data for any of the compounds, it is unpredictable to the skilled artisan as to which compound would have the desired biological activity. Further, the Examiner states that applicants disclose how to ascertain potential biological activity, but do not disclose whether compounds of the instant formula or related structure would have AMPA receptor activity. However, Applicants point the Examiner to the following statements in the specification indicating that compounds of the present invention are AMPA potentiators:

On page 18, lines 5-7, the Applicants state “The present invention further provides a method of potentiating glutamate receptor function in a patient, which comprises administering to said patient an effective amount of a compound of Formula I.”

Moreover, on page 19, lines 28-31, Applicants state “As used herein the term “potentiating glutamate receptor function” refers to any increased responsiveness of glutamate receptors, for example AMPA receptors, to glutamate or an agonist, and includes

but is not limited to inhibition of rapid desensitization or deactivation of AMPA receptors to glutamate.”

Further, on page 20, lines 1-3, Applicants state “A wide variety of conditions may be treated or prevented by compounds of Formula I or Formula II, and their pharmaceutically acceptable salts through their action as potentiators of glutamate receptor function,” and further elaborate on diseases treated on page 20 lines 3 -17, and reiterate that the present invention provides for the treatment of each of these conditions with a compound of Formula I on page 20, lines 16-17 of the specification.

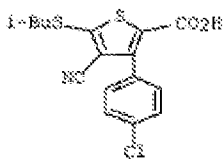
Thus Applicants have indicated that compounds of the present invention are AMPA potentiators, and have specific and substantial utility to the public in the treatment of various diseases and disorders, e.g. those described on page 20, lines 3-16 of the specification. The Examiner appears to doubt that compounds of the present invention are indeed AMPA potentiators. However, Applicants have affirmatively stated, as noted above, that compounds of the present invention have biological activity as AMPA potentiators. MPEP § 2107 states that “[o]ffice personnel are reminded that they must treat as true a statement of fact made by an applicant in relation to an asserted utility, unless countervailing evidence can be provided that shows that one of ordinary skill in the art would have a legitimate basis to doubt the credibility of such a statement.” The Examiner has provided no such evidence. As such, Applicants assert that the present claims meet the requirements of 35 U.S.C. § 112, second paragraph, and respectfully request withdrawal of the rejection.

#### **Claim Rejections – 35 U.S.C. § 101**

The Examiner has maintained a rejected Claim 25 under 35 U.S.C. §101. Applicants respectfully request withdrawal of this rejection in view of the cancellation of Claim 25.

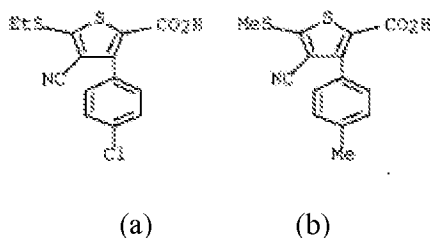
#### **Claim Rejections – 35 U.S.C. § 102**

The Examiner has also rejected Claim 1 and dependent claims under 35 U.S.C. § 102(b) as being anticipated by Selwood et al. and Abdulla et al. Selwood discloses the following compound wherein the variable “A” would correspond to –chloro:



Applicants note that the above compound is not within the scope of Claim 1, as the definition of the variable "A" does not include -chloro.

The Examiner also rejected Claim 1 and dependent claims under 35 § 102(b) as being anticipated by Abdulla et al., which teach the following compounds (a) and (b):



However, as noted above, compound (a) is not within the scope of Claim 1, and the definition for the variable "A" does not include -chloro. Moreover, Claim 1 does not encompass compound (b), since compounds where A is -(1-6C)alkyl are excluded when R<sup>1</sup> is S(1-4C)alkyl. Because neither Selwood et al., nor Abdulla et al. teach all limitations of the claimed invention, applicants assert that the present invention is not anticipated by these references. Withdrawal of the rejection is respectfully requested.

### Priority

Applicants respectfully request acknowledgment of foreign priority and receipt of the foreign priority documents. This is the national phase application, under 35 U.S.C 371, for PCT/US2005/000004, filed 01 January 2005, which claims the benefit under 35 U.S.C. 119 of EP 04380005.1 filed 9 January 2004, and of US provisional application 60/552,080, filed 10 March 2004. Applicants assert that they have complied with the provisions of 35 U.S.C 371 and 35 U.S.C 119, See File History, and are thus entitled to claim the benefit of priority of the above-referenced applications.

Applicants respectfully request entry of the amendments to the claims described above. In addition, in view of the amendments and arguments presented above, applicants respectfully request allowance of the pending claims. Moreover, applicants respectfully request acknowledgement of priority in view of the above discussion. Should the Examiner have any questions about the pending application, please do not hesitate to contact the undersigned at the number provided below.

Respectfully submitted,

/Tonya L. Combs/

Tonya L. Combs  
Agent for Applicants  
Registration No. 57,909  
Phone: 317-651-1266

Eli Lilly and Company  
Patent Division  
P.O. Box 6288  
Indianapolis, Indiana 46206-6288

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